

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 17, 2005

IN RE:

PETITION OF ATMOS ENERGY CORPORATION  
FOR APPROVAL OF FRANCHISE AGREEMENT  
WITH GREENEVILLE, TENNESSEE.

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DOCKET NO.  
04-00074

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ORDER APPROVING PETITION OF ATMOS ENERGY CORPORATION FOR  
APPROVAL OF FRANCHISE AGREEMENT WITH GREENEVILLE, TENNESSEE,  
PURSUANT TO TENN. CODE ANN. § 65-4-107

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This matter came before Director Deborah Taylor Tate, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on July 11, 2005 for consideration of the *Petition of Atmos Energy Corporation for Approval of Franchise Agreement with Greeneville, Tennessee* (the "*Petition*") filed on March 2, 2004.

**Petition**

In its *Petition*, Atmos Energy Corporation ("Atmos" or the "Company") requests Authority approval, pursuant to Tenn. Code Ann. § 65-4-107 (2004), of a franchise agreement contained in an ordinance of the Town of Greeneville, Tennessee ("Greeneville" or the "Town") entered by the Town on November 4, 2003 and duly accepted by Atmos on November 13, 2003. As stated in the *Petition*, the ordinance grants Atmos a nonexclusive franchise to use the public rights-of-way of Greeneville for the purposes of operating and maintaining a natural gas transmission system and providing natural gas service to the residents of Greeneville for a term of twenty (20) years. A copy of the ordinance is attached hereto as Exhibit 1. No person sought intervention in this matter.

Pursuant to a *Notice of Hearing* issued on May 20, 2005, a Hearing on the merits of the *Petition* of Atmos was held on July 11, 2005. The Company was represented in this Docket by the following counsel

**Misty Smith Kelley, Esq.;** Baker, Donelson, Bearman & Caldwell, 1800 Republic Center,  
633 Chestnut Street, Chattanooga, Tennessee 37450.

#### **Requirement of and Standards for Authority Approval**

Tenn Code Ann. § 65-4-107 (2004) provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority Approval pursuant to Tenn Code Ann. § 65-4-107 (2004) requires a determination by the Authority, after hearing, that “such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest”<sup>1</sup> Tenn. Code Ann § 65-4-107 (2004) further provides that in considering such privilege or franchise, the Authority “shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require . . .”<sup>2</sup>

#### **Pre-filed Testimony of Tony Hughes**

On June 23, 2005, Atmos filed the Direct Testimony of Tony Hughes, Operations Supervisor for the area served by Atmos that includes Greeneville. Mr. Hughes stated that the natural gas distribution system of Atmos in the Town contains approximately 90 miles of pipe and is interconnected with and dependent upon the distribution system located within and outside the corporate limits of Greeneville Atmos serves approximately 2,000 customers within the corporate limits of Greeneville of whom approximately 90% are residential and 10% are commercial and industrial According to Mr. Hughes, the majority of the pipeline in Atmos’s distribution system is

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<sup>1</sup> Tenn Code Ann § 65-4-107 (2004)

<sup>2</sup> *Id*

located within the public rights-of-way. Mr. Hughes stated that without access to these public rights-of-way, Atmos could not adequately operate, maintain or replace its distribution system.

Mr. Hughes asserted that Atmos and its predecessors have operated for many years in Greeneville under various franchise agreements with the Town. Atmos entered into negotiations with the Town in the fall of 2003 for a new agreement. According to Mr. Hughes, the new franchise agreement was the result of cooperative negotiations between Atmos and the Town.

#### **Prefiled Testimony of Hon. Darrell Bryan**

On June 24, 2005, the Town filed the Direct Testimony of the Hon. Darrell Bryan, Mayor of Greeneville. Mr. Bryan stated that he was personally involved in the negotiation process. According to Mr. Bryan, the Town had full opportunity to review and provide input as to all of the proposed terms. Additionally, Mr. Bryan stated that the franchise agreement is necessary and proper for the public convenience and properly serves and protects the public interest of the citizens of the Town.

#### **Findings and Conclusions**


Atmos's franchise agreement with Greeneville continues a longstanding arrangement whereby Atmos relies on the use of the Town's public rights-of-way for the purpose of operating and maintaining its natural gas distribution system. This franchise arrangement, which was undisputed, has been and continues to be of mutual benefit to Atmos, its customers and the community. The panel finds that this agreement is in the public interest. Accordingly, the franchise agreement between Atmos and the Town is approved pursuant to Tenn. Code Ann. § 65-4-107 (2004).

#### **IT IS THEREFORE ORDERED THAT:**

1. The proposed franchise agreement between Atmos Energy Corporation and the Town of Greeneville, Tennessee is approved

2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration within fifteen (15) days of the date of this Order; and

3 Any party aggrieved by the Authority's action embodied herein may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

  
Deborah Taylor Tate, Director

  
Pat Miller, Director

  
Sara Kyle, Director

ORDINANCE NO. 1532

**AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO PROVIDE THE TOWN OF GREENEVILLE, GREENE COUNTY, TENNESSEE, WITH NATURAL GAS SERVICE, AND THE RIGHT TO CONSTRUCT, MAINTAIN, AND OPERATE A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUNDS OF THE TOWN OF GREENEVILLE, GREENE COUNTY, TENNESSEE.**

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF GREENEVILLE, GREENE COUNTY, TENNESSEE:

**SECTION 1** There is hereby granted to Atmos Energy Corporation, a corporation organized and existing under the laws of the State of Texas, and the Commonwealth of Virginia, its successors and assigns (hereinafter for convenience, individually and collectively, referred to as "Company"), the right, authority, privilege and franchise to serve the Town of Greeneville (hereinafter for convenience referred to as "Municipality"), and in the providing of such natural gas service to construct, maintain and operate a system of gas mains, service pipes, regulator stations and all other necessary and appropriate equipment and facilities for the distribution of gas, in, upon, under, along, across and over the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporate limits of the Municipality, for the supplying and selling of gas and its by-products to said Municipality and the inhabitants, institutions and businesses thereof, and for such purposes to construct, lay down, maintain, and operate all necessary gas mains, service pipes and other appliances, fixtures and facilities as may be necessary for the transmission, distribution and sale of such to said Municipality and the inhabitants thereof for domestic, commercial, industrial and

institutional uses, and other purposes for which it is or may hereafter be used, for a period of Twenty (20) years from and after the passage and approval of this Ordinance.

**SECTION II** All gas mains, service pipes, fixtures, facilities and other appliances so laid, constructed and maintained by virtue of this Ordinance, shall be so laid, constructed and maintained in accordance with all applicable engineering codes adopted or approved by the natural gas distribution industry and/or engineering profession and in accordance with any applicable Statutes of the State of Tennessee and the Rules and Regulations of the Tennessee Regulatory Authority or of any other governmental regulatory commission, board or agency having jurisdiction over the Company. Said facilities shall be constructed as not to interfere with the drainage of said Municipality or unreasonably interfere with or injure any sewer or any other improvement which said Municipality has heretofore made or may hereafter make in, upon or along any highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground, or unnecessarily impede or obstruct such highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds of said Municipality, and shall conform to the grade as then or hereafter established. The Company agrees to attempt to utilize known right-of-way whenever practical before resorting to right of condemnation to which the Company may be entitled to utilize by law.

**SECTION III.** When the streets, avenues, alleys and other public ways are opened, or any other opening is made by the Company within the Municipality, whether the same be made for the purpose of laying, constructing, replacing or repairing the mains, pipes and other appliances and fixtures of the Company, the Company shall place and maintain necessary safety devices, barriers, lights and warnings to properly notify persons of any dangers resulting from such entrances, and shall comply with applicable safety regulations required by federal, state and local laws.

**SECTION IV** In the event it becomes necessary or expedient for the Municipality to change the course or grade of any highway, street, avenue, road, alley, way, parkway, or other public ground in which the Company is maintaining gas mains, pipes or other appliances and fixtures, then, upon the written request of the Municipality, the Company will remove or change the location or depth of such mains, pipes or other appliances and fixtures, as necessary to conform to the proposed street alteration

**SECTION V** Whenever the Company wishes to enter upon any highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground for the purpose of constructing, replacing or repairing any gas mains, pipes, or other appliances, it will, if the Municipality desires, notify the Municipality and file a plan or map of the proposed work, if practicable, before commencing same. Whenever any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public way shall be entered, dug up or disturbed by the Company, the Company shall, at its expense and as soon as possible after the work is completed, restore such highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground in as good condition as existed before the work was done and to the reasonable satisfaction of the Municipality. In the event the Company shall fail to fulfill its obligations under this Section, the Municipality, after giving the Company reasonable written notice, and failure of the Company to make such repairs or restoration, may make the necessary restoration or repairs itself and the Company shall be liable for the cost of same

The provisions of this Section shall not be applied or interpreted in such a way as to prevent or delay Company work that may be required as a result of any emergency, leak or other immediate hazard or danger. Likewise, the provisions of this Section anticipate that the Company shall not be unreasonably denied permission to perform necessary work.

**SECTION VI.** As part of the consideration for granting this franchise, the Municipality elects the right to charge and levy, and the Company agrees to collect from its customers, a franchise fee equal to three (3%) of that portion of the Company's gross revenues which result from residential sales of gas in the franchise area or to franchise customers, and two percent (2%) of that portion of Company's gross revenues which result from sales of gas to commercial and industrial customers within the franchise area or to franchise customers, and three percent (3%) of that portion of Company's gross revenues which result from residential sales of gas attributable to "other sales of gas" delivered in whole or in part through the Greeneville franchise system to customers without the franchise area, provided that franchise fees from "other sales of gas" shall be levied and collected only while a similar payment is not levied or required to be paid by any other political subdivision of the State of Tennessee on such sales outside the corporate limits of the Municipality. Company shall collect such franchise fees from its customers in accordance with the provisions of T.C.A. Section 65-4-105, and shall remit to the Municipality franchise fees collected on a fiscal year basis from July 1 to June 30 of each year, such payment to be made within thirty (30) days after the end of each fiscal during the term of this franchise.

**SECTION VIII.** The Company shall at all times indemnify and hold harmless the Municipality from and against any and all lawful claims for injury to any person or property by reason of the Company or its employees' failure to exercise due care and diligence in and about the installing and maintenance of said system, guarding trenches and excavation while said system is being installed or subsequent extensions, repairs or alterations are being made or generally in the operation and maintenance of said system, provided the Company shall have been notified in writing of any claim against the Municipality on account thereof, and shall have been afforded the opportunity fully to defend the same.



SECTION VIII. The Municipality and the Company hereby agree that this Ordinance shall from time to time be subject to rules and regulations adopted by the Company and approved by the Tennessee Regulatory Authority or any other regulatory body having jurisdiction thereof during the term of this Ordinance, and shall also be subject to all Rules and Regulations adopted and approved by the Tennessee Regulatory Authority or any other regulatory body and that all such Rules and Regulations shall be and become a part of this Ordinance to the same extent and with the same effect as if said Rules and Regulations were herein set out in full. The Company shall not be obligated or required to make any extension of distribution mains or service lines except in accordance with the provisions relating thereto adopted or approved by the Tennessee Regulatory Authority, or any other regulatory body having jurisdiction thereof during the term this Ordinance.

SECTION IX. Nothing herein contained shall be construed as preventing the Company from installing, placing, replacing, taking up, repairing or removing gas pipes, mains, service pipes or other devices for furnishing gas services, from using any easements for gas service which are shown on any plats of any portion of said Municipality heretofore or hereafter platted or recorded or any such easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever.

SECTION X. If any section, or portion of any section, of this Ordinance shall hereafter be declared or determined by any court of competent authority to be invalid, the Company and the Municipality at their election may ratify or conform the remaining portions of this Ordinance, and upon such ratification or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

SECTION XI. The Company shall, within sixty (60) days after the passage of the Ordinance, file with the City Recorder or other appropriate official of the Municipality its

unconditional acceptance, signed by its President or Vice President, of the terms and conditions of this Ordinance. After filing of such acceptance, this Ordinance shall constitute a contract between the parties thereto and shall, subject to the rights and powers vested in the Tennessee Regulatory Authority or such other regulatory body of the State of Tennessee as may hereafter succeed to the rights and powers of the Tennessee Regulatory Authority or as may exercise statutory jurisdiction of gas companies furnishing gas service in the State of Tennessee, be the measure of the rights, powers, obligations, privileges and liabilities of said Municipality and of said Company.

**SECTION XI.** Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event the Company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Company is so prevented shall not be counted against Company for any reason. The term "force majeure", as used herein, shall mean any cause not reasonably within Company's control and includes, but is not limited to, acts of God, strikes, lock-outs, wars, riots, orders or decrees of any lawfully constituted federal, state or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits, temporary failures of gas supply, or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Ordinance.

**SECTION XIII** All the privileges given and obligations created by this Ordinance shall be binding upon the successors and assigns of the Company.

SECTION XIV. This new Ordinance shall take effect and be in force immediately upon its passage by the Town of Greeneville, Tennessee and approval by the Board of Mayor and Aldermen of said Town.

Adopted by the Board of Mayor and Aldermen for the Town of Greeneville, Tennessee, this 4th day of November, 2003

David Bry  
Mayor

Approved this 4th day of November, 2003.

Samuel Z. Warner  
City Recorder

Attest.

Brenda Loney  
(SEAL)

**ACCEPTANCE OF FRANCHISE**

Town of Greeneville, Tennessee

TO: City Recorder  
Greeneville, Tennessee

Atmos Energy Corporation hereby respectfully files with you its written acceptance of the franchise adopted by the Board of Mayor and Aldermen for the Town of Greeneville, Tennessee, dated November 4, 2003, entitled:

ORDINANCE NO. 1532

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO PROVIDE THE TOWN OF GREENEVILLE, GREENE COUNTY, TENNESSEE, WITH NATURAL GAS SERVICE, AND THE RIGHT TO CONSTRUCT, MAINTAIN, AND OPERATE A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUNDS OF THE TOWN OF GREENEVILLE, GREENE COUNTY, TENNESSEE.

and all the rights and privileges, terms and provisions therein contained.

IN WITNESS WHEREOF, Atmos Energy Corporation, has caused this instrument to be signed by its duly authorized offices on this 13<sup>th</sup> day of November, 2003.

ATMOS ENERGY CORPORATION

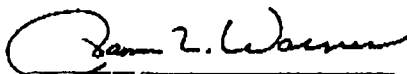
By Thomas R. Blose, Jr.  
Thomas R. Blose, Jr.  
President, Mid-States Division

**RECEIPT**

TO: ATMOS ENERGY CORPORATION

The Undersigned, City Recorder of the Town of Greeneville, Greene County, Tennessee hereby acknowledges receipt of an instrument of acceptance of a certain gas franchise ordinance signed by the President of the Mid-States division of Atmos Energy Corporation, and that the acceptance of such franchise ordinance was delivered to the undersigned as City Recorder of said Town on the 20~~th~~ day of November, 2003, and is now held as part of the records of said Town.

WITNESS the hand of said City Recorder and the seal of said Town on this 20~~th~~ day of November, 2003.



City Recorder